

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-217
Hawaii Administrative Rules

August 18, 2003

SUMMARY

1. §11-217-7 is amended.
2. §11-217-31 is amended.
3. §11-217-74 is amended.
4. Chapter 217 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 217

DISABILITY AND COMMUNICATION ACCESS BOARD
RULES OF PRACTICE AND PROCEDURE

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-217-1 Purpose and scope. The purpose of this chapter is to establish rules of practice and procedure which shall govern procedures before the disability and communication access board. These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding authorized by law. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Applicant" means the person, agency or officer for whom the site specific alternate design proceeding is instituted.

"Board" means the disability and communication access board.

"Facility access unit" means staff of the disability and communication access board.

"Interpretive opinion" means a determination as to the applicability or non-applicability with respect to a factual situation of any guideline of the board or of a statute which the board is required to administer or enforce.

"Party" means each person admitted as a participant, or properly seeking and entitled to be admitted as a participant in any board proceeding.

"Person" means an individual, a private or public organization of any character, a trust or estate, a society or firm, an assembly, a partnership, a corporation, a professional corporation, an association, the State, any political subdivision of the State, a county, a State agency or any instrumentality of a county.

"Petitioner" means a party making or on whose behalf a petition or application is made for a site specific alternate design review or design specification proceeding.

"Presiding Officer" means the person conducting a site specific alternate design review or guideline proceeding who may be the chairperson of the board or the chairperson's representative.

"Public buildings, facilities, and sites" means buildings, facilities, and sites that:

- (1) Are designed, constructed, purchased, or leased with the use of any federal, state, or county funds;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public; or
- (3) Are constructed on state or county lands or lands that will be transferred to the state or county.

"Respondent" means the party against whom the petition is filed, against whom relief is being sought or any party who contests or controverts a proceeding.

"Site specific alternate design" means a relief from specific requirements of section 103-50, HRS, as determined by the disability and communication access board pursuant to section 103-50, HRS, when the site specific alternate design will ensure an alternate design that provides equal or greater access for persons with disabilities. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-3 The disability and communication access board. (a) The principal office of the board is at Honolulu, Hawaii. All communications pursuant to this

chapter to the board shall be addressed to the chairperson of the board, Honolulu, Hawaii, unless otherwise specifically directed.

(b) For the purpose of this chapter, the regular work hours shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, unless otherwise provided by statute or executive order.

(c) All documents required to be filed herein shall be filed with the board at Honolulu, Hawaii, within such time limits as prescribed by these rules or by order of the board. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-4 Obtaining necessary information. (a) The board may, in its discretion or upon the application of any interested person or an agency of the state or county government hold such proceedings as it may deem necessary for the purpose of obtaining information necessary or helpful in its rules, regulations, design specifications, and interpretive opinions.

(b) Procedures to be followed by the board shall, unless specifically prescribed in this chapter, be such as in the opinion of the board will best serve the purposes of such proceedings. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-5 Public notices. (a) When an applicant for a site specific alternate design or similar action has an application pending before the board, the board may require the applicant to pay all costs related to the processing of said application. Costs may include processing fees, proceeding costs and costs related to publishing the required public notices.

(b) When a public notice is required, and the board had determined that the applicant shall pay all fees assessed for publishing legal notices, payment shall be made directly to the newspaper publishing said notice.

(c) The public notice shall appear in a newspaper of general circulation in the county in which the activity is proposed.

(d) The public notice shall include at least the following:

- (1) Name, address and phone number of the agency issuing the public notice;
- (2) Name and address of each applicant;
- (3) Brief description of the activities or operations at the location of the proposed site specific alternate design;
- (4) A brief description of the procedures for the formulation of final determinations, including the specified comment period and other means by which interested persons may comment upon those determinations; and
- (5) Address and phone of the agency premises at which interested persons may obtain further information and may inspect a copy of the application and related materials.

(e) The public notice shall be reviewed and approved by the board prior to publication and must appear in the approved form.

(f) The applicant shall obtain an affidavit specifying the date the notice appeared in the newspaper(s) and make a copy of the affidavit available to the board.

(g) The board shall make information regarding the proposed site specific alternate design, design specification or interpretive opinion available for inspection in the county in which the applicant's activities are being proposed, and may at its discretion circulate information to appropriate state and county officials. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-6 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 2/11/91; comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-7 Governing standards. Subject to amendment by the board or site specific alternate design granted by the board, the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt. 1191, as they existed on April 13, 1998, and the Fair Housing Amendments Act Accessibility Guidelines, 24 C.F.R. Pt. 100.205, are hereby adopted as the standards governing all plans and specifications for the construction of public buildings, facilities, and sites by the State or any county, or on behalf of the State or any county, and are made a part of this chapter. The board may also establish guidelines for design specifications not covered in the Americans with Disabilities Act Accessibility Guidelines, or the Fair Housing Amendments Act Accessibility Guidelines. [Eff and comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §§103-50)

§§11-217-8 to 11-217-9 (Reserved)

SUBCHAPTER 2

PROCEDURE FOR SITE SPECIFIC ALTERNATE DESIGN

§11-217-10 Scope. (a) Every petition requesting a site specific alternate design shall be reviewed by the facility access unit. A petition requesting the board to hold a proceeding on a site specific alternate design may be submitted directly to the board. Submission of a petition directly to the board does not preclude review by the facility access unit.

(b) The board may on its own motion or by petition of any interested person, hold a review proceeding on a proposed site specific alternate design.

(c) Procedures to be followed by the board shall, unless specifically prescribed in this chapter, be such as in the opinion of the board will best serve the purposes of such proceedings.

(d) Any procedure in a site specific alternate design review proceeding may be modified or waived by stipulation of the parties and informal disposition may be made of any contested matter by stipulation, agreed settlement, consent order, or default. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00;

Comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-11 Filing of documents. (a) All documents related to a petition for a site specific alternate design will be filed at the board office during regular work hours. Such papers may be sent by mail, hand-carried to the board in Honolulu, Hawaii, or as set forth in any law, rule or regulation for such filing. The date on which the papers are actually received by the board or at the proceeding shall be deemed to be the date of filing.

(b) All papers filed with the board shall be written in black ink, typewritten, or printed, shall be plainly legible; shall be on strong durable paper, no larger than 8 1/2" x 14" in size, except that tables, maps, charts and other documents may be larger, folded, if possible, to the size of the documents to which they are attached.

(c) All papers must be signed in indelible ink by the party signing the same or the duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of his or her knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(d) Unless otherwise specifically provided by a particular rule, regulation, or order of the board, an original of all papers shall be filed.

(e) The initial document filed by any person in any proceeding shall state on the first page thereof the name and mailing address of the person or persons who the petitioner desires to be served with any documents filed in the proceeding. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-12 Computation of time. (a) Within thirty calendar days after the site specific alternate design petition is filed, the board shall:

- (1) File a written ruling denying the petition and stating the board's reason or reasons for the denial, or
- (2) Initiate and complete site specific alternate design review proceedings as provided under this chapter within sixty days from the date of the filing of a completed application.

In any event, the board shall send written notification of the board's action to the petitioner by certified mail, return receipt requested. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-13 Consent of request for site specific alternate design. (a) A request by an aggrieved person or proper party or by an interested agency, or the State or county governments, requesting a site specific alternate design review shall contain concise statements of:

- (1) The legal authority under which the proceeding or action is to be held or made,
- (2) The site specific alternate design, disagreement, denial, grievance or such matter which is being contested by the applicant,
- (3) The basic facts and issues raised, and
- (4) The relief requested.

(b) The board shall prepare instructions for any petition or application, which may be required for any authorized proceedings. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50).

§11-217-14 Notice. (a) No review on a request for a site specific alternate design shall be held until notice has been given to all parties. Unless otherwise provided by law, all parties shall be given written notice of the review by registered or certified mail with return receipt requested at least fifteen days before the proceeding.

(b) Unless otherwise provided by law, if service by registered or certified mail is not made because of the refusal to accept service or the board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of the

review proceeding may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen days prior to the date of the scheduled review proceeding. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-15 Commencement. A review on a matter may be commenced by the board or upon the application of any interested person when the processing of such application necessitates such a review. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-16 Docket. The presiding officer or his or her representative shall maintain a docket of all requested site specific alternate designs and each request shall be assigned a number. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-17 Appearance before the board. (a) Individuals may appear on their own behalf, or an officer or employee of an agency of the State or a political subdivision of the State may represent such agency in any review proceeding before the board.

(b) A person may be represented by or with counsel.

(c) A person shall not be represented in any proceeding except as stated in subsections (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person before the board, the personal appearance or signature shall constitute a representation to the board that under the provisions of these rules and the law, that the individual is authorized and qualified to represent the particular person or agency who is represented. The board may at any time require any person acting in a representative

capacity to show proof of the authority and qualification to act in such capacity.

(e) No person who has been associated with the board as an officer, employee or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time the person was associated with the board unless the person first shall have obtained the written consent of the presiding officer upon a verified letter indicating that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board.

(f) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the board in such proceeding or matter. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-18 Substitution of parties. Upon request and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff 2/11/91; comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-19 Consolidations. The presiding officer, in his or her own discretion or upon request, may consolidate and contemporaneously consider two or more cases which involve substantially the same parties, or issues which are the same or closely related. Rulings will be site specific, and no requests for general waivers may be considered. [Eff 2/11/91; comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-20 Intervention. (a) Any person not a party to the action may seek to become a party by filing a request to intervene. The request shall state the grounds upon which the person claims to have an interest in the proceeding. At least ten days before the proceeding, the person shall file the request with the board and shall serve the request upon all parties or their attorneys.

(b) The presiding officer may permit intervention if he or she determines:

- (1) That the person seeking to become a party shows that the party has an interest in a question of law or fact involved in the matter or has a property or financial interest that may not be adequately represented by existing parties; and
- (2) That intervention will not unduly broaden the issues or delay the site specific alternate design review process.

(c) The presiding officer may permit intervention to the extent and upon such terms, as the presiding officer may deem proper. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-21 Amendment of documents and dismissal. If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the board as to the contents thereof, or is otherwise insufficient, the board, in its discretion, or upon the request of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-22 Continuances or extension of time. All site specific alternate design review proceedings shall be held at the time and place as set forth in the notice of proceeding. The presiding officer may continue the proceeding from day to day or adjourn to a later date or to a different place without further notice, provided

such an announcement thereof is made at the proceeding.
[Eff 2/11/91; comp 7/28/95; am and comp 9/5/00;
comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-23 Decision. All final orders, opinions, or rulings entered by the board in a review proceeding shall be served upon the parties or persons participating in the proceeding by mailing a certified copy of the decision and orders and accompanying findings and conclusions within a reasonable time to each party or the attorney of record. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-24 Retention of documents by the board.
(a) All documents filed with or presented to the board shall be retained in the files of the board. However, the board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such document.
(b) Document retention and disposition standards shall be in accordance with statewide general records retention schedule and board's record retention and disposition schedule. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-25 Public information. (a) Unless otherwise provided for by statute, these rules, or order of the board, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum or other document filed with the board shall be available for inspection by the public after a final decision has been issued.
(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board in Honolulu during regular office hours. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-217-26 to 11-217-30 (Reserved)

SUBCHAPTER 3

PROCEDURE TO ESTABLISH GUIDELINES FOR DESIGN SPECIFICATIONS

§11-217-31 Notice of proposed guidelines for design specifications. (a) When the board proposes to issue, amend, or repeal a guideline for a design specification which is not covered in the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R., Pt 1191, or the Fair Housing Amendments Act Accessibility Guidelines, 24 C.F.R., Pt 100.205, a notice of proposed action will be published at least once in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action at least 20 calendar days prior to the date of the proceeding. Notice shall be mailed to all persons who make a timely request for advance notice of such proceeding.

(b) A notice of the proposed issuance, amendment, or repeal of a design specification will include:

- (1) A statement of the date, time, and place where the proceeding shall be held.
- (2) Reference to the authority under which the issuance, amendment, or repeal of a design specification is proposed.
- (3) A statement of the substance of the proposed action.
- (4) Docket number specifically assigned to the proceeding. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-32 Further notice of proceeding. For any issuance of new guidelines where the board deems it warranted, an additional notice of the proceeding will be issued by publication thereof in a newspaper of general circulation in the State. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-33 Presiding officer. Each proceeding shall be presided over by the chair of the board or his or her designee. The proceeding shall be conducted to afford all interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to take all actions necessary to the orderly conduct of the proceeding. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-34 Appearance before the board. At the commencement of the proceeding, the presiding officer shall read the notice of proceeding and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of the proceeding as the presiding officer shall prescribe. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-35 Submission of testimony. All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice. Every witness shall, before proceeding to testify, state his or her name, address, and whom he or she represents at the proceeding, and shall give such other information respecting his or her appearance as the presiding officer may request. The presiding officer shall confine the testimony to the issues before the board. Every witness shall be subject to questioning by the presiding officer and members of the board. Cross-examination by private persons shall not be permitted except upon the approval of the presiding officer. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-36 Oral and written presentation at such proceeding. All interested persons or agencies of the State or political subdivisions of the State will be

afforded an opportunity to submit data, views or arguments, which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the board within five calendar days following the close of the proceeding other comments or recommendations in support of or in opposition to the proposed action. The period for filing written comments or recommendations may be extended by the presiding officer for good cause. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-37 Transcript of testimony. Unless otherwise specifically ordered by the presiding officer, testimony given at a design specification proceeding shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data presented at the proceeding, and which are deemed to be authentic and relevant by the presiding officer, shall be accepted by the board and made a part of the record. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-38 Continuance of proceedings. All design specification proceedings shall be held at the time and place as set forth in the notice of the proceeding. The presiding officer may continue the proceeding from day to day or adjourn to a later date or to a different place without further notice, provided such an announcement is made at the original proceeding. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-39 Emergency design specifications. Notwithstanding the foregoing rules, if the board finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a design specification upon less than twenty days notice of a proceeding, and states in writing its reason for such finding, it may proceed without prior notice or

proceeding or upon such abbreviated notice and proceeding as it finds practicable to adopt an emergency design specification to be effective for a period not longer than 120 days without renewal. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-217-40 to 11-217-44 (Reserved)

SUBCHAPTER 4

PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF DESIGN SPECIFICATIONS

§11-217-45 Scope. Any interested person may file a petition requesting the board to adopt, amend, or repeal any design specification. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-46 Form of petition. The petition requesting an adoption, amendment, or repeal of any design specification shall be in writing and shall include:

- (1) The petitioner's name, mailing address, and telephone number;
- (2) The petitioner's signature or the signature of the petitioner's authorized representative or attorney;
- (3) A statement of the nature of the petitioner's interest;
- (4) A draft or substance of the proposed design specification, or amendment, or designation of the design specification sought to be repealed.
- (5) A statement of the reason or reasons in support of the proposed design specification, amendment, or repeal; and
- (6) Any other information relevant to the petition. [Eff 2/11/91; comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-47 Filing of petition. The petitioner shall file the original petition requesting the board to adopt, amend, or repeal any design specification at the board's office. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-48 Computation of time. (a) Within thirty calendar days after the petition is filed, the board shall:

- (1) File a written ruling denying the petition and stating the board's reason or reasons for the denial,
- (2) Initiate proceedings as provided under this chapter, or
- (3) Notify the petitioner of action to extend to allow time for full consideration.

(b) In any event, the board shall send written notification of the board's action to the petitioner by certified mail, return receipt requested. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-49 Review by facility access unit. Every petition requesting the adoption, amendment, or repeal of any design specification shall be reviewed by the facility access unit. A petition requesting the adoption, amendment, or repeal of any design specification may be submitted directly to the board. Submission of a petition directly to the board does not preclude review by the facility access unit. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-50 Dismissal of petition. The board may dismiss any petition which requests the adoption, amendment, or repeal of any design specification if the petition fails to comply with the requirements of §11-217-46 of these rules. [Eff 2/11/91; comp 7/28/95; am

and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-51 Written notice of petition. At the board's discretion and upon written notice to the petitioner, the board may provide written notification of the petition requesting the board to adopt, amend, or repeal any design specification to any person or persons for review and recommendations on the petition. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103.50)

§11-217-52 Commencement. A proceeding may be commenced by the board in its own discretion or upon the application of any interested person when the processing of such application necessitates such a proceeding. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-53 Docket. The presiding officer or his or her designee shall maintain a docket of all requested actions for adoption, amendment, or repeal of any design specification and each request shall be assigned a number. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-54 Appearance before the board. (a) An individual may appear in their own behalf, and an officer or employee of any agency of the State or a political subdivision of the State may represent such agency in any proceeding before the board.

(b) A person may be represented by or with counsel in any proceeding under these rules.

(c) A person shall not be represented in any proceeding except as stated in subsections (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person before the board, the personal appearance or signature shall constitute a representation to the board that under the provisions of these rules and the law, that the individual is authorized and qualified to represent the particular person or agency who is represented. The board may at any time require any person acting in a representative capacity to show proof of the authority and qualification to act in such capacity.

(e) No person who has been associated with the board as an officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time the person was associated with the board unless the person first have obtained the written consent of the presiding officer upon a verified showing that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board.

(f) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the board in such proceeding or matter. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-55 Substitution of parties. Upon request and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff 2/11/91; comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-56 Consolidations. The presiding officer, in his or her own discretion or upon request, may consolidate and contemporaneously consider two or more cases which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous

proceeding will be conducive to the proper dispatch of the board's business and to the ends of justice and will not unduly delay the proceedings. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-57 Intervention. (a) Any person not a party to the action may seek to become a party by filing a request to intervene. The request shall state the grounds upon which the person claims to have an interest in the proceeding. At least ten days before the proceeding, the person shall file the motion with the board, and shall serve the request upon all parties or their attorneys.

(b) The presiding officer may permit intervention if he or she determines:

- (1) That the person seeking to become a party shows that the party has an interest in a question of law or fact involved in the matter or has a property or financial interest that may not be adequately represented by existing parties; and
- (2) That intervention will not unduly broaden the issues or delay the proceedings.

(c) The presiding officer may permit intervention to the extent and upon such terms as the presiding officer may deem proper. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-58 Amendment of documents and dismissal. If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the board as to the contents thereof, or is otherwise insufficient, the board, in its discretion, or upon the request of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-59 Continuances or extension of time. All design specification proceedings shall be held at the time and place set in the notice of proceeding; however, the presiding officer may at such time and place continue the proceeding from day to day or adjourn the proceeding to a later day or to a different place without notice other than the announcement thereof at the proceeding. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-60 Decision. All final orders, opinions, or rulings entered by the board in a design specification proceeding shall be served upon the parties or persons participating in the proceeding by mailing a certified copy of the decision and orders and accompanying findings and conclusions within a reasonable time to each party or to the attorney of record. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-61 Retention of documents by the board. Document retention shall be in accordance with section 11-217-24. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-62 Public information. (a) Unless otherwise provided by statute, rule or order of the board, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum, or other document filed with the board shall be available for inspection by the public after a final decision has been issued.

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board during regular office hours. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-217-63 to 11-217-69 (Reserved)

SUBCHAPTER 5

INTERPRETIVE OPINIONS

§11-217-70 Scope. Any interested person may file a request for an interpretive opinion as to the applicability of any provision administered by the board or of any rule, order, or design specification of the board. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-71 Form of request. All requests for an interpretive opinion shall be in writing and shall include:

- (1) The requester's name, mailing address, and telephone number;
- (2) The requester's signature or the signature of the requester's authorized representative or attorney;
- (3) A designation of the specific provision, rule, design standard, or order in question, together with a statement of the controversy or uncertainty involved;
- (4) A statement of the requester's interest in the subject matter, including the reason or reasons for submission of the request;
- (5) A statement of the requester's position or contention; and
- (6) A memorandum of authorities containing a full discussion of reasons and legal authorities in support of the requester's position or contention. [Eff 2/11/91; comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-72 Filing of request. The requester shall file the original request for an interpretive opinion at the board's office. [Eff 2/11/91; am and comp 7/28/95;

am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6)
(Imp: HRS §103-50)

§11-217-73 Computation of time. (a) Within thirty calendar days after the request is filed, the board shall:

- (1) File a written ruling denying the request and stating the board's reason or reasons for the denial,
- (2) Initiate proceedings as provided under this chapter, or
- (3) Notify the petitioner of action to extend to allow time for full consideration.

(b) In any event, the board shall send written notification of the board's action to the petitioner by certified mail, return receipt requested. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-74 Review by facility access unit. The facility access unit shall review every petition requesting an interpretive opinion. A petition requesting an interpretive opinion may be submitted directly to the board. Submission of a petition directly to the board does not preclude review by the facility access unit. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; am and comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-75 Dismissal of request. The board may dismiss any request for an interpretive opinion which fails to comply with the requirement of §11-217-71 of these rules. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-76 Written notice of request. At the board's discretion and upon written notice to the requester, the board may provide written notification of the request for an interpretive opinion to any person or

persons for review and recommendations on the request.
[Eff 2/11/91; comp 7/28/95; am and comp 9/5/00;
comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-77 Commencement. A proceeding may be commenced by the board in its own discretion or upon the application of any interested person when the processing of such application necessitates such a proceeding.
[Eff 2/11/91; comp 7/28/95; am and comp 9/5/00;
comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-78 Proceeding on request. At its discretion, the board may hold an informal proceeding or a public proceeding on the request before the board files its written ruling on the request. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-79 Docket. The presiding officer or his or her designee shall maintain a docket of all requested interpretive opinions and each request shall be assigned a number. [Eff 2/11/91; am and comp 7/28/95; comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-80 Appearance before the board. (a) An individual may appear in their own behalf, and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency in any proceeding before the board.
(b) A person may be represented by or with counsel in any proceeding under these rules.
(c) A person shall not be represented in any proceeding except as stated in subsections (a) and (b) of this section.
(d) When an individual acting in a representative capacity appears in person before the board, the personal appearance or signature shall constitute a

representation to the board that under the provisions of these rules and the law, that the individual is authorized and qualified to represent the particular person or agency who is represented. The board may at any time require any person acting in a representative capacity to show proof of the authority and qualification to act in such capacity.

(e) No person who has been associated with the board as an officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time the person was associated with the board unless the person first have obtained the written consent of the presiding officer upon a verified showing that the person did not give personal consideration to the matter of proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board.

(f) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the board in such proceeding or matter. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-81 Consolidations. The presiding officer, in his or her discretion or upon request, may consolidate and contemporaneously consider two or more cases which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous proceeding will be conducive to the proper dispatch of the board's business and to the ends of justice and will not unduly delay the proceedings. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-82 Continuances or extension of time. All interpretive opinion proceedings shall be held at the time and place set in the notice of proceeding; however, the presiding officer may at such time and place continue the proceeding from day to day or adjourn

the proceeding to a later day or to a different place without notice other than the announcement thereof at the proceeding. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-83 Decision. All final orders, opinions, or rulings entered by the board in an interpretive opinion proceeding shall be served upon the parties or persons participating in the proceeding by mailing a certified copy of the decision and orders and accompanying findings and conclusions within a reasonable time to each party or to the attorney of record. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-84 Retention of documents by the board. Document retention shall be in accordance with section 11-217-24. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-85 Public information. (a) Unless otherwise provided by statute, rules, or order of the board, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum, or other document filed with the board shall be available for inspection by the public after a final decision has been issued.

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board during regular office hours. [Eff 2/11/91; am and comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-217-86 Interpretive opinion in board's discretion. Nothing in this chapter shall operate to

§11-217-86

prevent the board, in its own discretion, from issuing an interpretive opinion to terminate a controversy or to remove uncertainty. [Eff 2/11/91; comp 7/28/95; am and comp 9/5/00; comp 9/20/03] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-217-87 to 11-217-91 (Reserved)

DEPARTMENT OF HEALTH

Amendments to and compilation of chapter 217, title 11, Hawaii Administrative Rules, on the Summary Page dated August 18, 2003, were adopted on September 20, 2003, following a public hearing on May 15, 2003, after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on April 14, 2003.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

Chiyome L. Fukino, M.D.
Director of Health

Linda Lingle
Governor
State of Hawaii

Date: September 9, 2003

September 10, 2003
Filed

APPROVED AS TO FORM:

Michelle E. Nakata
Deputy Attorney General